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The Uniform Commercial Code In Minnesota: Articles 2 and 6 – Sales and Bulk Transfers

This article is one of several being published to acquaint Minnesota practitioners with the newly enacted Uniform Commercial Code. Mr. Minish examines the Sales and Bulk Sales Articles of the UCC and comments on their relation to prior Minnesota Law.

Robert A. Minish*

ARTICLE 2. SALES

Article 2 of the *Uniform Commercial Code*¹ is "a complete revision and modernization of the Uniform Sales Act . . ."² Article 2 is commonly referred to as the businessman's article because its underlying premise is that the law should enforce the reasonable expectations of businessmen. The extent of this revision and its sheer bulk combined with loose drafting³ should be enough to dismay any practitioner accustomed to the present law. This discussion will attempt to lighten the burden by explaining the major changes and innovations of article 2 and their significance for the practitioner.⁴

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1. AMERICAN LAW INSTITUTE & NATIONAL CONFERENCE ON UNIFORM LAWS, *UNIFORM COMMERCIAL CODE, 1962 OFFICIAL TEXT WITH COMMENTS* (1963) [hereinafter cited as CODE; the official comments will be cited CODE § —, comment]. The Code has been enacted in Minnesota and appears in MINN. STAT. ANN. § 336.1–101 through § 336.10–105 (1965). Most references in the text will be to the statutory Uniform Commercial Code which will be referred to as Code in the text, but footnote references will be to the 1962 official text.

2. CODE § 2–101, comment. The Uniform Sales Act is in MINN. STAT. §§ 512.01–79 (1961).

3. One court, referring to § 2–207, said, "The statute is not too happily drafted." *Roto-Lith, Ltd. v. F. P. Bartlett & Co.*, 297 F.2d 497, 500 (1st Cir. 1962). But see 76 HARV. L. REV. 1481 (1963); 111 U. PA. L. REV. 132 (1962) for critical evaluation of this court's approach to the Code.

4. The official comments after each section of the Code help to explain the intent of the drafters and should be the first source consulted on any problem. Anyone working with article 2 must always consider its relation to the other articles. For example, article 1 sets forth general provisions that are applicable

As enacted in Minnesota,⁵ article 2 contains no deviations from the 1962 official text of the Code.⁶ The article is divided into seven parts, organized chronologically from the formation of the sales contract through remedies upon breach.

PART 1. SHORT TITLE, GENERAL CONSTRUCTION, AND SUBJECT MATTER

A. Scope

Section 2-102 states, "this Article applies to transactions in goods" Thus, the general scope of article 2 does not differ materially from that of the Uniform Sales Act.⁷ Although transactions that are in reality "security transactions"⁸ are excluded by section 2-102, the sales aspects of such transactions are included. Investment securities are excluded, but the provisions of article 2 may be applicable to transactions involving securities.⁹

The Code definition of goods expands somewhat the scope of article 2. "Goods" is defined to mean all things movable,¹⁰ as well as the unborn young of animals, growing crops,¹¹ timber, minerals and structures to be removed from the land if severance is to be effected by the seller.¹²

One ambiguity exists in regard to equipment leases. Presumably, such leases are not included in article 2 since the title of the article refers to sales and the definition of a sale refers to the passing of title.¹³ However, where a lease contemplates ultimate

to all articles. Many of the definitions contained in § 1-201 will be particularly relevant. See generally, Kinyon, *The Uniform Commercial Code in Minnesota: Introduction and Provisions of Articles 1 and 10*, 50 MINN. L. REV. — (1965).

5. See MINN. STAT. ANN. ch. 336.2 (Temp. pamph. 1965).

6. The entire wealth of law review articles and comments on article 2 can be used without fear of local variations. See the "Selected Bibliography" at the end of this article.

7. See A STUDY OF THE EFFECT OF THE UNIFORM COMMERCIAL CODE ON MINNESOTA LAW 47 (1964) [hereinafter cited in footnotes as MINN. STUDY and referred to in text as *Minnesota Study*].

8. These are covered by article 9. CODE § 2-102, comment.

9. CODE § 2-105 defines "goods" to exclude investment securities, which are covered by article 8, but the comment to this section explains that any provision of article 2 may, where appropriate, be applied by analogy to situations not specifically covered by the provisions of article 8.

10. CODE § 2-105.

11. Compare MINN. STAT. § 512.76(1) (1961), which in defining "Goods" used the term "chattels personal" and specified it included emblements and industrial growing crops.

12. § 2-107(1). Whether such items were regarded as goods under the Uniform Sales Act was uncertain. See MINN. STUDY 55.

13. CODE § 2-106(1).

ownership by the lessee through an option to purchase at the end of the term upon payment of a minimal sum, it may be regarded for some purposes as a conditional sale rather than a lease.¹⁴ Arguably, such a lease arrangement would be a secured transaction with article 2 applicable to its sales aspects.

B. Dual Standard for Merchants and Nonmerchants

One major and controversial change in the article is the adoption of a dual standard for merchants and nonmerchants.¹⁵ This approach, an innovation in Anglo-American law, originated with Napoleon's Code de Commerce.¹⁶ Williston was quite critical of this innovation and argued if a person engaged in mercantile transactions "he is, under the present law, and should continue to be, entitled to the same rights and subject to the same duties as if he were a merchant."¹⁷

The practitioner should always be alert to the differing results that may follow if any of the parties to a transaction is a merchant under the Code. The potentiality for confusion inherent in this dual standard is increased by the ambiguity in the definition of merchant. A merchant is not only "a person who deals in goods of the kind" but also one who "otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction . . ."¹⁸ Determining whether a person held himself out as having such knowledge or skill presents a close question, which may have to be resolved by litigation.¹⁹ The comment to section 2-104 is some help, for it attempts to classify the special provisions relating to merchants.

14. See Rev. Rul. 55-540, 1955-2 CUM. BULL. 39, which indicates factors that may warrant treatment of such transactions for tax purposes as a sale rather than a lease.

15. See CODE § 2-104, comment, for a catalogue of the 14 sections containing special provisions relating to merchants.

16. Corman, *The Law of Sales Under the Uniform Commercial Code*, 17 RUTGERS L. REV. 14, 16 (1962). Cf. MINN. STUDY 50, which describes two instances of a dual standard used in the Uniform Sales Act.

17. Williston, *The Law of Sales in the Proposed Uniform Commercial Code*, 63 HARV. L. REV. 561, 573 (1950).

18. CODE § 2-104(1).

19. See *Victor v. Barzaleski*, 19 Pa. D. & C.2d 698 (Luzerne County Ct. 1959) (whether general maintenance man installing a heating system was a merchant); *Allen v. Savage Arms Corp.*, 52 Luzerne Leg. Reg. Rep. 159 (C.P. Pa. 1962) (hardware dealer regularly selling shotguns a merchant bound by warranty); *Fox Pools, Inc. v. Villarose*, 77 York Leg. Rec. 165 (C.P. Pa. 1963) (dealer selling swimming pool a merchant); see also Hall, *Article 2—Sales—“From Status to Contract”?*, 1952 WIS. L. REV. 209, 212, indicates that there may be confusion as to the applicable rule where one or more parties to the

PART 2. FORM, FORMATION, AND READJUSTMENT OF CONTRACT

A. *Statute of Frauds*

The liberalization of the formal requirements needed to satisfy the Statute of Frauds²⁰ ranks as one of the most important features of the Sales article. A difference of opinion exists as to whether this is a change for the better.²¹ Nevertheless, it is certain to have an impact upon commercial practice in Minnesota.

1. Transactions Covered

The Statute of Frauds in article 2 applies only to the sale of goods and does not include choses in action.²² The number of transactions subject to the written memorandum requirement of the Statute is decreased because the dollar amount has been increased from fifty to five hundred dollars. Since the monetary minimum is stated in terms of "price" instead of "value,"²³ there may be more certainty as to whether a transaction is subject to the Statute of Frauds.

2. Memorandum

Under the Uniform Sales Act, a writing or memorandum that would satisfy the Statute of Frauds was required to state accurately all of the essential terms of the agreement.²⁴ Section 2-201(1) is much easier to satisfy; the writing need only "indicate that a contract for sale has been made between the parties" Only the quantity term of the contract must be included in the writing, since the contract is not enforceable beyond the quantity shown. Other terms such as price, time and place of delivery, and

transaction are not merchants. Holahan, *Contract Formalities and the Uniform Commercial Code*, 3 VILL. L. REV. 1, 23 (1957), states that "it is highly likely that there will be litigation over who is a 'merchant'; it may often be a jury question."

20. See CODE § 2-201.

21. See Corman, *supra* note 16, at 19.

22. The Code provides separate Statutes of Frauds for documentary choses in action, § 8-319 (securities), § 9-203 (secured transactions) and for nondocumentary choses in action such as simple contract rights, § 1-206.

23. 1 HAWKLAND, A TRANSACTIONAL GUIDE TO THE UNIFORM COMMERCIAL CODE 23-24 (1964) [hereinafter cited TRANSACTIONAL GUIDE] discusses this change and concludes that "it is likely, therefore, that no change was intended in the employment of the word 'price' in section 2-201." He feels that value and price can mean the same thing since under § 2-304(1) price can be made payable in "money . . . or otherwise."

24. *Union Hay Co. v. Des Moines Flour & Feed Co.*, 159 Minn. 106, 198 N.W. 312 (1924); MINN. STUDY 57.

time and place of payment can be established by a court under authority of the Code²⁵ with the aid of the parol evidence available.²⁶

A great improvement in Minnesota sales law is the provision that the Statute of Frauds is satisfied if the writing is signed by the party "against whom enforcement is sought or by his authorized agent or broker."²⁷ Under the Uniform Sales Act, the Minnesota Supreme Court held that a contract evidenced by a written memorandum could not be enforced against the party to be charged unless it was also signed by the party relying on the memorandum.²⁸

3. Letters of Confirmation

The Code provides for certainty with respect to contract terms by sanctioning the common commercial practice of writing letters of confirmation of oral agreements. Under the old law, a letter of confirmation bound the sender, but not the recipient. Now, between merchants, a written confirmation of a contract sent within a reasonable time will satisfy the Statute of Frauds unless written objection is given within ten days after receipt.²⁹ The burden of proof as to the terms of the contract remains the same.³⁰ If an objection is made, then the letter of confirmation should not satisfy the Statute of Frauds as to either party.³¹ Thus, lawyers should counsel their commercial clients to send letters confirming the terms of all their oral contracts. Likewise, clients should be advised to review carefully the letters of confirmation they receive and object in writing where the terms are not as agreed upon.

4. Part Performance

The sending of letters of confirmation becomes even more im-

25. See CODE § 2-305 (open price term); § 2-308 (delivery); § 2-309 (time of shipment or delivery); § 2-310 (time of payment).

26. CODE § 2-202.

27. CODE § 2-201(1).

28. *Peterson v. New England Furniture & Carpet Co.*, 210 Minn. 449, 299 N.W. 208 (1941). See MINN. STUDY 57.

29. CODE § 2-201(2).

30. See CODE § 2-201, comment 3.

31. Certainly a letter of confirmation cannot bind the recipient who objected to it; likewise, the recipient should not be able to both object to the letter of confirmation and assert that it is binding on the sender. See HAWKLAND, SALES AND BULK SALES 28-29 (1958) [hereinafter cited SALES AND BULK SALES]. TRANSACTIONAL GUIDE 26 states positively that if there is an objection, both parties can assert the Statute of Frauds as a defense. *But see* *Corman*, *supra* note 16, at 21.

portant in view of the Code's limitation on part performance as a means of satisfying the Statute. Under the Uniform Sales Act, if the buyer accepted part of the goods or made a part payment, the entire oral contract was enforceable.³² Under the Code, part performance makes the contract enforceable only to the extent to which goods have been accepted or payment made.³³ The reason for this change is that while part performance is "an unambiguous overt admission by both parties that a contract actually exists,"³⁴ it does not establish the quantity term, except by the actual acceptance and receipt of the goods or by the payment made.³⁵

5. Admissions

An admission that a contract for sale was made, contained in a pleading, testimony, or otherwise in court, will now satisfy the Statute of Frauds.³⁶ This provision raises several problems. First, does the making of a motion to dismiss for failure to state a claim on which relief may be granted constitute an admission "that a contract for sale was made" so as to preclude the assertion of the Statute of Frauds as a defense? A Pennsylvania court ruled that an admission for purposes of this section had to be made in a responsive pleading.³⁷ This seems a desirable result; otherwise a defendant could not make such a motion where the Statute of Frauds was involved.³⁸ Second, may the plaintiff force the defendant to admit, at trial under threat of perjury, the making of a contract? Hawkland advises plaintiffs to try this tactic, contending that only the "welsher" is protected if compelled admissions are not permitted, since in the absence of a contract a defendant can deny its existence and assert the Statute of Frauds.³⁹ Third, the Code does not specify when an admission is made "otherwise in court." Thus it is not clear if the admission must be made during the trial or may be made during pretrial procedures. The more liberal construction, extending the admission rule to pretrial proceedings, seems most consistent with the purpose of this section, to prevent a party from admitting the contract in court and still asserting the Statute as a defense.⁴⁰

32. *Bundy v. Voelker*, 145 Minn. 19, 175 N.W. 1000 (1920); MINN. STUDY 58.

33. See CODE § 2-201(3)(c).

34. CODE § 2-201, comment 2.

35. TRANSACTIONAL GUIDE 27-28.

36. See CODE § 2-201(3)(b).

37. *Beter v. Helman*, 41 West. 7 (Pa. 1958).

38. See TRANSACTIONAL GUIDE 30.

39. *Ibid.*

40. See CODE § 2-201, comment 7.

B. Formation in General

In contrast to the Uniform Sales Act, article 2 sets forth rules relating to the formation of sales contracts. In many instances these rules make significant changes in contract law.⁴¹ Section 2-204 establishes the general policy of the Code, which is to regard the parties as having entered into a contract when their conduct indicates an intention to be bound, even if certain terms are missing.⁴² Thus, a contract "does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy."⁴³ The main consideration to remember is that while the Code does not create a contract where none existed, it will give effect to conduct showing an intention to make a binding agreement, even if all of the terms are not spelled out. This constitutes a marked departure from the prior law that required agreement between the parties on all essential terms.⁴⁴

1. Firm Offers

Businessmen tend to regard a firm offer as being what it purports to be, an offer that cannot be revoked for a certain period of time.⁴⁵ Among lawyers and the courts a different philosophy has prevailed. Basic contract law makes it clear that a party's promise to keep an offer open is not binding without consideration.⁴⁶ Section 2-205 makes a firm offer by a merchant enforceable even if not supported by consideration. The offer must be made in writing and signed⁴⁷ by the merchant. He cannot be trapped into making a firm offer by signing a form supplied by the offeree, since the firm offer provision must be signed separately to be enforceable.

The time during which the offer remains firm is limited to three months.⁴⁸ If an offer is stated to remain open for longer than three months, it does not thereby become immediately revokable,

41. See generally Hawkland, *Major Changes Under the Uniform Commercial Code in the Formation and Terms of Sales Contracts*, 10 PRAC. LAW. 73 (May 1964).

42. See CODE § 2-204(3).

43. *Ibid.*

44. MINN. STUDY 63.

45. Hawkland, *supra* note 41, at 74.

46. MINN. STUDY 64.

47. See CODE § 1-201(39), and the comment thereto for definition of "signed."

48. The expiration time should be stated precisely, rather than in terms of the number of days the offer will remain firm.

but remains firm for three months.⁴⁹ Of course, offers can be made irrevocable for longer periods if supported by consideration.

2. Offer and Acceptance

Section 2-206 eliminates any technical common law rules governing the mode of acceptance where the offer does not specify a particular mode.⁵⁰ "Unless otherwise unambiguously indicated," acceptance may be made in any manner and by any reasonable medium.⁵¹

Section 2-206(1)(b) is designed to prevent the "unilateral contract trick," whereby a seller who accepted a contract by shipping nonconforming goods could successfully defend a suit for breach by arguing that the shipment was not an acceptance because the goods were nonconforming.⁵² Under the Code such a shipment of nonconforming goods will constitute both an acceptance of the contract and a breach, unless "the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer."⁵³ Consequently, clients should be advised to give notice to the buyer when they ship nonconforming goods as an accommodation.

3. Additional Terms in Acceptance or Confirmation—The Battle of Conflicting Forms

Under present contract law an acceptance must be a "mirror image" of the offer; an acceptance containing different or additional terms is not an acceptance but a counteroffer.⁵⁴ Thus, in a typical commercial transaction where buyer and seller use conflicting forms, the parties have not made an enforceable contract.⁵⁵ This comes as a surprise to most businessmen, who believe an exchange of forms closes a deal. Section 2-207 makes a significant departure from common law and adopts the viewpoint of businessmen that this exchange of forms is an enforceable contract.

49. CODE § 2-205, comment 3; Hawkland, *supra* note 41, at 75.

50. The *Minnesota Study* states that no Minnesota cases deal with the effectiveness of a particular means of acceptance. MINN. STUDY 66. However, as a general rule, the question of whether the means adopted was authorized was one of fact. 1 WILLISTON, CONTRACTS § 83 (3d ed., Jaeger ed. 1957).

51. CODE § 2-206(1).

52. MINN. STUDY 66; TRANSACTIONAL GUIDE 33.

53. CODE § 206(b).

54. MINN. STUDY 68.

55. Hawkland describes the various gambits possible in the exchange of forms. TRANSACTIONAL GUIDE 8-19.

The approach is twofold. First, it provides a means to determine whether the parties, by their exchange of forms, have made a contract. An enforceable contract results only if the negotiations reflect "a definite and seasonable expression of acceptance or a written confirmation" of the offer. Second, if a contract exists, the means for defining its terms are prescribed. When there is a contract, the terms are those stated in the offer⁵⁶ and additional terms are regarded as proposed additions to the contract. However, between merchants the additional terms become part of the contract unless: (1) the offer limits acceptance to its terms; (2) the additional terms materially alter the contract; or (3) notice of objection is given.⁵⁷

A significant problem in defining the terms of the contract will be the determination of which terms in an acceptance will materially alter the offer. The comment gives some examples which would "result in surprise or hardship if incorporated without express awareness of the other party . . ."⁵⁸ such as negating the warranty of merchantability. In a leading New York case, decided under pre-Code law, the court said it would regard a provision for arbitration contained in a seller's acknowledgment form as a material alteration under the Code and not a part of the contract.⁵⁹ On the other hand, in a much criticized decision, the First Circuit stated that a disclaimer of warranties in a seller's acknowledgment was a material alteration, but still allowed the disclaimer to become part of the contract.⁶⁰ From a counseling standpoint, the determination of whether a certain term would be a material alteration cannot be made with certainty. Clients should not assume that an additional term in an acceptance or acknowledgment form, objectionable to them, is a material alteration that

56. See Davenport, "How to Handle the Battle of the Forms Under the Uniform Commercial Code," A.B.A. Law Notes for the General Practitioner, April, 1965, for suggested language to insert in the offer and acceptance.

57. CODE § 2-207(2).

58. CODE § 2-207, comment 4.

59. Application of Doughboy Indus., Inc., 17 App. Div. 2d 216, 233 N.Y.S.2d 488 (1962). This case presents a classic illustration of the battle of the forms. The court's characterization of the transaction was that "the buyer and seller accomplished a legal equivalent to the irresistible force colliding with the immovable object." *Id.* at 216-17, 233 N.Y.S.2d at 490.

60. Roto-Lith, Ltd. v. F. P. Bartlett & Co., 297 F.2d 497 (1st Cir. 1962). Here, the goods were shipped and accepted by the buyer, who argued that the acknowledgment was an acceptance, but that the disclaimer was a material alteration and not a part of the contract. The court said that such a result would be an "absurdity," because if a binding contract existed, the offeror would not assent to new terms. For criticism of this reasoning see 1 TRANSACTIONAL GUIDE 16; Corman, *supra* note 16, at 25; 76 HARV. L. REV. 1481 (1962); 111 U. PA. L. REV. 132 (1962).

will not become part of the contract. To be certain that the term will not become part of the agreement, they should object to it. Where the parties have numerous dealings and wish to avoid the problems of conflicting forms altogether, they may execute an overriding agreement that will govern all their dealings.

When there is an exchange of forms, the Code eliminates the seller's option to conclude a contract on the terms stated in his acknowledgment by shipping the goods.⁶¹ Under the old law, while any additional terms in the acknowledgment made it a counteroffer, if the seller shipped the goods and the buyer accepted, a contract was formed on the terms stated in the acknowledgment. Under section 2-207(3), the shipment and acceptance of the goods would constitute "conduct by both parties which recognizes the existence of a contract" The terms of the contract would be those upon which the parties agreed,⁶² as evidenced by the forms exchanged and any terms supplied by the Code.⁶³

4. Modification of Existing Contracts

The Code makes inroads on the doctrine of consideration in this area. For example, under section 2-209 a modification of an existing contract is enforceable without consideration. Formerly, a promise to perform an existing obligation was not consideration and would not support a modification of the contract,⁶⁴ even when commercial necessity, such as a falling market, made modification essential to secure performance.⁶⁵ Protection against one party extorting a modification is provided by the general obligation of good faith,⁶⁶ by allowing the contract to prohibit modification unless made in writing,⁶⁷ and by the Statute of Frauds if the contract as modified is within its provisions.⁶⁸ This protection may be undercut by the provision that an attempt at modification

61. See TRANSACTIONAL GUIDE 18-19.

62. The parties must agree on the quantity term, since the Code makes no provision for determining this.

63. For example, if the parties did not agree on the warranty term, the implied warranties of the Code would become part of the contract. CODE §§ 2-314 & 2-315; TRANSACTIONAL GUIDE 18-19.

64. MINN. STUDY 72.

65. See Hawkland, *supra* note 41, at 76-77, which states that in most situations the party acting in good faith was the one who suffered most by this rule.

66. See CODE § 1-203. See also CODE § 2-103(1)(b).

67. CODE § 2-209(2).

68. CODE § 2-209(3).

may operate as a waiver.⁶⁹ However, a waiver may be retracted unless there has been reliance on it.⁷⁰

PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

Part 3 deals with general obligations of the parties and the construction of contracts. One controversial provision is the prohibition on unconscionable contracts. Under the Code, a court may refuse to enforce or modify a contract or contract provision that is unconscionable in light of its commercial setting,⁷¹ purpose, and effect.⁷² Despite the language about commercial setting the application of this section is not limited to merchants. While this section has been criticized as a startling and controversial innovation impairing freedom of contract,⁷³ the drafters of the Code merely intended to make explicit a power courts have long exercised.⁷⁴ It does not represent a major departure from prior Minnesota law.⁷⁵

A possible difficulty with this section is the fact that unconscionability goes undefined. Hawkland suggests the cases cited in the official comment, most of which involve warranty disclaimers and limitations on remedies, are helpful in determining what the drafters meant by "unconscionable."⁷⁶ One court has held a contract unconscionable because of a great disparity between the price and the value of the goods.⁷⁷

A. *Open Price Term*

The Code approach to the formation of sales contracts is that the one essential requirement of a contract is a definite expression of an intent to be bound. Even if all the terms are not set forth,

69. CODE § 2-209(4); See TRANSACTIONAL GUIDE 162-64.

70. CODE § 2-209(5).

71. CODE § 2-302(1).

72. CODE § 2-302(2).

73. The *Transactional Guide* summarizes this criticism. TRANSACTIONAL GUIDE 44-45. See also Corman, *The Law of Sales Under the Uniform Commercial Code*, 17 RUTGERS L. REV. 14, 27 (1962).

74. CODE § 2-302, comment 1.

75. MINN. STUDY 78.

76. TRANSACTIONAL GUIDE 47.

77. *American Home Improvement, Inc. v. MacIver*, 105 N.H. 432, 201 A.2d 886 (1964). Under the contract the seller was to install siding on a house. In a suit by the seller after the buyer cancelled, the court refused to enforce the contract because the value of the goods was less than half the total price. *Denkin v. Sterner*, 10 Pa. D. & C.2d 203, 70 York Leg. Rec. 105 (C.P. 1956), held a large liquidated damages provision unconscionable.

the contract will not fail for indefiniteness. Section 2-305 provides that if the parties intend to be bound but leave the price term open, a contract exists with the price "a reasonable price at the time for delivery."⁷⁸ This eliminates any confusion that existed under the Uniform Sales Act⁷⁹ and conforms to commercial practices.⁸⁰ If the contract gives one of the parties the power to fix the price, the Code imposes on him the duty of acting in good faith so the contract will not fail for lack of mutuality.⁸¹ Where the contract is completely silent as to price, a factual question arises as to whether the parties intended to be bound.⁸² To avoid confusion and difficult problems of proof when the parties want to leave the price term open, they should specify an intention to be bound before the price is determined.⁸³

B. *Delivery and Payment*

As is the case in the Uniform Sales Act, section 2-307 requires that goods must be delivered at one time rather than in installments, "unless otherwise agreed." An exception is permitted in circumstances where "it is not commercially feasible to deliver or receive the goods in a single lot."⁸⁴ Since these circumstances cannot be determined with any definiteness, it is wise to specify in the contract if delivery may be made in installments.

Under the Uniform Sales Act payment and delivery are concurrent conditions, so payment is normally due upon delivery to the carrier.⁸⁵ Section 2-310 changes this rule to conform to the commercial practice that "payment is due at the time and place at which the buyer is to receive the goods."

C. *Warranty*

1. *Quiet Possession*

The Code makes several changes in the law of warranties. A relatively minor change is the elimination of the warranty of quiet possession as a separate warranty and the inclusion of it

78. Similar flexibility is allowed for the "particulars of performance." See CODE § 2-311(1).

79. The *Minnesota Study* explains that it is not clear under present Minnesota law "as to just how 'open' the price term may be . . ." MINN. STUDY 82.

80. Corman, *supra* note 73, at 28.

81. CODE § 2-305(2).

82. CODE § 2-305, comment 2.

83. TRANSACTIONAL GUIDE 57.

84. CODE § 2-307, comment 3.

85. MINN. STAT. § 512.42 (1961).

with the warranty of title.⁸⁶ While this benefits sellers because suit for breach of this warranty must be brought within four years of the sale,⁸⁷ it may prejudice some buyers, since the statute of limitations could expire before the buyer's possession was disturbed.⁸⁸

2. Creation and Scope

In general, the changes relating to the creation and the scope of warranties will have little effect on Minnesota law.⁸⁹ Two implied warranties of the Uniform Sales Act, that goods sold by description shall conform to the description and that goods sold on the basis of a sample shall conform to that sample, are made express warranties under section 2-313. The implied warranty of merchantability when the seller is a merchant dealing in goods of the kind and the implied warranty of fitness for a particular purpose are continued by sections 2-314 and 2-315. The Code attempts to define the requisites of merchantability,⁹⁰ and sales of food and drink are specifically covered.⁹¹

3. Warranty Disclaimers

The Code's attitude toward warranty disclaimers is quite strict. The most important restriction is that disclaimers must be conspicuous.⁹² To be avoided, the warranty of merchantability must be specifically mentioned in a disclaimer and, if made in writing, must be conspicuous.⁹³ The warranty of fitness for a particular purpose must be conspicuously disclaimed in writing.⁹⁴

The conspicuousness requirement calls for careful drafting of a disclaimer.⁹⁵ Because the Code makes certain implied warranties

86. CODE § 2-312, comment 1.

87. CODE § 2-725(2) states that a breach of warranty occurs when tender of delivery is made.

88. Compare TRANSACTIONAL GUIDE 93 with Hall, *Article 2—Sales—“From Status to Contract”*?, 1952 WIS. L. REV. 209, 215-16, as to the desirability of this provision.

89. See MINN. STUDY 93-100.

90. CODE § 2-314(2), comment 6, offers a definition that is not meant to be exhaustive.

91. CODE § 2-314(1). These warranties do not extend to the furnishing of services. Cf. *Balkowitsch v. Minneapolis War Memorial Blood Bank, Inc.*, 132 N.W.2d 805 (Minn. 1965).

92. See CODE § 1-201(10) for the definition of conspicuous.

93. CODE § 2-316(2).

94. *Ibid.*

95. *Boeing Airplane Co. v. O'Malley*, 329 F.2d 585, 593 (8th Cir. 1964), stated that a disclaimer of fitness made in the same color ink and same size print as the other provisions was not conspicuous.

into express warranties, the disclaimer should refer to both express and implied warranties. In drafting a disclaimer, attorneys should also consider including a limitation or exclusion of consequential damages.⁹⁶ However, such a limitation, as well as any oppressive disclaimer, is subject to the prohibition against unconscionable contracts.⁹⁷ Furthermore, any limitation on consequential damages for personal injuries in the case of consumer goods is "prima facie unconscionable."⁹⁸ Where a conflict between an express warranty and a disclaimer arises, the two provisions are to be construed as consistent with each other, whenever possible; otherwise the warranty is given effect.⁹⁹

4. Privity

Section 2-318 is intended to avoid most of the controversy about the privity limitation. It extends warranty protection only to persons in the buyer's family or household and his house guests; it does not alter Minnesota law.¹⁰⁰ The Code intends to otherwise remain neutral on the question of whether the privity requirement should be abolished as to "other persons in the distributive chain."¹⁰¹ Despite the Code's avowed neutrality, some commentators believe section 2-318 will curb the trend away from the privity requirement.¹⁰²

5. Mercantile Terms

Sections 2-319 through 2-325 deal with various mercantile terms such as F.O.B., C.I.F., letters of credit and the like. These terms and the obligations of the parties in each instance are defined in light of present commercial practice. Parties desiring to use any of these terms in agreements can now be certain of their meaning.

96. See CODE § 2-719(3).

97. CODE § 2-302. *Henningson v. Bloomfield Motors, Inc.*, 32 N.J. 358, 161 A.2d 69 (1960) (dicta), held an automobile manufacturer's disclaimer of an implied warranty of merchantability to be unconscionable as against a purchaser's suit for personal injuries caused by a defective part. See *TRANSACTIONAL GUIDE* 80-85, for the view that this disclaimer is unconscionable because it produces surprise results, not because it is oppressive.

98. CODE § 2-719(3).

99. CODE § 2-316(1).

100. MINN. STUDY 104. An employee will not be regarded as within this category. *Hochgertel v. Canada Dry Corp.*, 409 Pa. 610, 187 A.2d 575 (1963).

101. CODE § 2-318, comment 3; see also CODE § 2-313, comment 2.

102. Comment, 4 *NATURAL RESOURCES J.* 626, 632 (1965). For this reason California did not enact § 2-318.

6. Sales on Consignment

The reservation of title in the seller by a sale on consignment to a person dealing in goods of the kind will no longer by itself protect the property from the reach of the buyer's creditors.¹⁰³ The seller must file under article 9 or be able to establish knowledge by the creditors that the buyer was "substantially engaged in selling the goods of others."¹⁰⁴ Thus, where clients are selling goods on consignment, they should be advised to comply with the filing requirements of article 9. Likewise anyone financing inventory of a consignee should be advised to search the financing statements filed under article 9.

PART 4. TITLE, CREDITORS AND GOOD FAITH PURCHASERS

A. *De-emphasis of Title*

Under the Uniform Sales Act, locating title determined which party to the transaction had various rights or duties such as risk of loss or an insurable interest. A significant change wrought by the Code is a de-emphasis of title.¹⁰⁵ Rather than solving all problems by reference to title, specific provisions determine such things as the risk of loss or existence of an insurable interest. Consequently, the lawyer dealing with a problem in this area should look first at the specific provisions of article 2 to see if they apply to the particular problem. Only if no specific provision is applicable will the location of title become important. Then section 2-401 should be consulted, for it states when title passes from the seller to the buyer.

The rules for determining when title passes are generally consistent with present law. However, they are now rules of law, rather than presumptions as they were under the Uniform Sales Act.¹⁰⁶ The goods must have been identified to the contract before title can pass.¹⁰⁷ It passes when the seller "commits himself," which, depending on the terms of the contract, may consist of shipment, delivery of documents, or making the contract.¹⁰⁸ Under

103. See CODE § 2-326(3).

104. CODE § 2-326(3)(b).

105. See Llewellyn, *Through Title to Contract and a Bit Beyond*, 15 N.Y.U.L. REV. 159 (1938), for the explanation of and genesis for this change. But see Williston, *The Law of Sales in the Proposed Uniform Commercial Code*, 63 HARV. L. REV. 561, 570-71 (1950), for severe criticism of this section.

106. MINN. STAT. § 512.19 (1961).

107. CODE § 2-501 defines the manner in which goods may be identified to the contract.

108. CODE § 2-401, comments 2, 4.

the Code the rules of title passage can only be varied by explicit agreement;¹⁰⁹ whereas the intent of the parties, as determined by the terms of the contract and the acts and conduct of the parties at the time of the transaction, formerly determined when title passed.¹¹⁰

B. Purchase by a Buyer in the Ordinary Course of Business

Section 2-403(2) makes a significant and controversial change with respect to buyers in the ordinary course of business. This section provides "any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in the ordinary course of business." A typical example used by commentators is that of a person leaving a watch for repair with a jeweler. Under this section, if the jeweler sells the watch in the ordinary course of business to a purchaser in good faith who has no knowledge that the watch has only been entrusted to the jeweler, the purchaser will have good title. As between the innocent parties (*i.e.*, the person entrusting the merchant with possession and the buyer in the ordinary course of business) the buyer is protected by the Code. Of course, if the goods are stolen and then entrusted to a merchant, the buyer would not receive good title, since the seller can only transfer the rights of the entruster.

A less controversial change is made by section 2-403(1). Under present law payment by check is conditional payment until the check is cashed. If a bad check is given, the seller can reclaim the goods even from a subsequent good faith purchaser.¹¹¹ Under the Code the good faith purchaser for value is protected against the original seller, despite the existence of a bad check.¹¹²

PART 5. PERFORMANCE

A. Forced Breach

This part defines and clarifies many rules relating to performance of the contract. Most of the provisions are derived from present commercial practice and make few changes. Two changes

109. CODE § 2-401(1).

110. *Haugen v. Dick Thayer Motor Co.*, 253 Minn. 199, 91 N.W.2d 585 (1958); MINN. STUDY 118-19.

111. This section was intended primarily for consignment sales and transactions where a seller retained a security interest in the goods. In those situations it does not change present law. See SALES AND BULK SALES 106-07.

112. MINN. STUDY 125.

that have been made are designed to prevent "forced breaches," whereby a party desiring to break a disadvantageous contract and avoid damages forces the other party to breach the contract first. Under section 2-511(2), the seller cannot force the buyer into a breach by unexpectedly demanding cash at the time of delivery, since the seller must grant "any extension of time reasonably necessary to procure it." Similarly, the buyer cannot force the seller into a breach by "fly-specking" and rejecting the goods as nonconforming. Section 2-508 gives the seller an absolute right, upon "seasonable" notice, to cure the defect before the time for performance has expired.¹¹³ In the case of a "surprise rejection," the seller is allowed a reasonable time for cure after the time for performance expires.

B. Risk of Loss

The specific rules relating to risk of loss vary, depending upon whether there has been a breach. Section 2-509 governs risk of loss in the absence of breach. Special rules apply where the goods are shipped by carrier or held by a bailee for delivery without being moved. Otherwise, if the seller is a merchant the risk of loss passes to the buyer on his receipt of the goods. If the seller is not a merchant, the risk passes on "tender of delivery." These rules should be considered in drafting contracts since they "are subject to contrary agreement." Where a party has breached the contract he will bear the risk of loss to the extent that it exceeds the other party's effective insurance coverage calculated without regard to subrogation rights.¹¹⁴

PART 6. BREACH, REPUDIATION AND EXCUSE

The Code codifies the present law requiring the seller to make perfect tender. Section 2-601 states that if the goods are nonconforming in any respect, the buyer may reject all, accept all, or accept part and reject part. The severity of this requirement of strict performance is alleviated somewhat by the seller's right to cure under section 2-508. Between merchants the seller has some protection by virtue of section 2-605(1). Under this section, if the buyer rejects nonconforming goods, the seller has the right to request a written statement of all defects on which the buyer

113. If the notice of intent to cure is given after the buyer has changed his position, the notice may not be regarded as seasonable. Corman, *supra* note 73, at 40.

114. CODE § 2-510, comment 3.

proposes to rely. If the buyer fails to state a defect "which is ascertainable by reasonable inspection," he cannot later rely upon it to justify the rejection. The buyer's right of rejection is also curtailed with respect to installment contracts. He can reject an installment of nonconforming goods only if the defect substantially impairs the value of the installment and cannot be cured.¹¹⁵ If the defect substantially impairs the value of the whole contract, there is a breach of the whole.

The manner in which the buyer can reject the goods is detailed in section 2-602. The buyer must follow this section carefully, for an ineffective rejection is an acceptance under section 2-606(1)(b). Where the goods are perishable or "threaten to decline in value speedily" unless the seller instructs otherwise, the buyer must make a reasonable effort to sell them for the seller's account.¹¹⁶ A buyer who revokes his acceptance of nonconforming goods "has the same rights and duties with regard to the goods involved as if he had rejected them."¹¹⁷ Thus, the buyer and his lawyer no longer are forced to elect between rescission and damages.

The right of a party to withhold performance and demand assurance of performance from the other party is considerably broadened. Under section 2-609(1) if "reasonable grounds for insecurity arise" a party may demand adequate assurance of performance and suspend his performance, if commercially reasonable, until he receives such assurance. Between merchants, the reasonable grounds for insecurity as well as the determination of what is adequate assurance of performance are to be defined by commercial standards and "need not arise from or be directly related to the contract in question."¹¹⁸ "A buyer who falls behind in 'his account' with the seller" or a seller who makes defective deliveries of similar goods would present the other party with reasonable grounds for insecurity.¹¹⁹ Failure to provide adequate assurance of performance within thirty days is a repudiation of the contract.

PART 7. REMEDIES

A. *Seller's Remedies*

The seller's remedies on discovery of the buyer's insolvency have been expanded by section 2-702. The seller's right to with-

115. CODE § 2-612(2).

116. CODE § 2-603(1). The buyer's compliance with this section is measured by a standard of good faith. CODE § 2-603(3).

117. CODE § 2-608(3).

118. CODE § 2-609, comment 3.

119. *Ibid.*

hold delivery except for cash is continued. In addition, he is given a right to reclaim the goods provided he makes a demand for reclamation within ten days of the buyer's receipt of the goods. This demand must be made, even if the seller will not retake possession of the goods until later. However, if the buyer misrepresented his solvency in writing within three months before delivery, the seller's right to reclaim is not restricted by this ten day limitation. The seller's right to reclaim is cut off by a buyer in the ordinary course of business or a lien creditor. The latter has been construed to include a trustee in bankruptcy.¹²⁰

Other remedies available to the seller are indexed in section 2-703. Unlike the seller's right to reclaim the goods, which, if successful, excludes other remedies, these remedies are cumulative. The Code rejects the doctrine of election of remedies "as a fundamental policy." Whether there is an election of remedies "depends . . . upon the facts of the individual case."¹²¹ In general, the remedies included in this section are similar to the remedies available under the Uniform Sales Act. They are to "be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed. . . ."¹²²

Under the Uniform Sales Act if the seller completed the goods after the buyer's breach he ran the risk that a court would deny recovery for the costs of completion because he failed to mitigate damages.¹²³ Under the Code if goods are only partially completed when the buyer breaches, a seller may, if commercially reasonable, complete the goods to avoid loss.¹²⁴ The buyer has the burden of proving that the seller's action was not commercially reasonable.¹²⁵

The seller's right to stop goods in transit is extended beyond the situation where the buyer is insolvent. He may stop delivery when "the buyer repudiates or fails to make a payment due before delivery," but only of shipments in carload, truckload, planeload or larger quantities.¹²⁶ This right is available to anyone "in the position of a seller," including a person holding a security interest in the goods,¹²⁷ and it extends to goods in the possession of a carrier or other bailee.

120. *In re Kravitz*, 278 F.2d 820 (3d Cir. 1960), applying the definition contained in § 9-301(3). See Corman, *supra* note 73, at 47-48, for criticism of this decision.

121. CODE § 2-703, comment 1.

122. CODE § 1-106(1).

123. MINN. STUDY 188; SALES AND BULK SALES 155-57.

124. CODE § 2-704(2).

125. CODE § 2-704, comment 2.

126. CODE § 2-705(1).

127. CODE § 2-707.

The seller's right to resell upon the buyer's breach is extended not only to enforce the unpaid seller's lien, but also to fix the measure of his damages.¹²⁸ Where the seller resells the goods "in good faith and in a commercially reasonable manner," the resale price determines the seller's damages rather than being merely evidence thereof.¹²⁹ His damages will be the difference between this price and the contract price, plus incidental damages, less expenses saved by reason of the breach. Unless prohibited by the agreement, the sale may be a private one. If the sale is private, the seller must give the buyer reasonable notice of his intention to resell. If the sale is public, he must give notice of the time and place of sale, unless the goods are perishable or will decline in value speedily. The seller is explicitly given the right to buy at a public sale and probably has this right at a private sale.¹³⁰

The seller's action for the price is not dependent upon the passage of title, but is allowed in situations where the buyer has accepted the goods, where conforming goods are lost or damaged after risk of loss has passed to the buyer, and where the seller would be unable to resell goods identified to the contract.¹³¹ The action is in reality one for specific performance, so the seller must hold the goods for the buyer's account. If the seller is able to resell the goods, he may do so anytime before collection of the judgment, but he must credit the proceeds to the buyer.¹³²

B. Buyer's Remedies

The buyer's remedies upon breach, indexed in section 2-711, are also expanded. He has a right to obtain goods identified to the contract if the seller becomes insolvent within ten days of receipt of the first installment of the price.¹³³ Formerly, the buyer could obtain the goods only if title had passed to him.¹³⁴ He is given the right to "cover" or obtain substitute goods and, if he acts in good faith, recover as damages the difference between the contract price and the cover price, plus his consequential damages.¹³⁵ The measure of damages for nondelivery remains the difference between the market price and the contract price, but the time for measuring the market price is changed to the time

128. MINN. STUDY 193.

129. CODE § 2-706(1).

130. See SALES AND BULK SALES 151.

131. See CODE § 2-709(1).

132. CODE § 2-709(2).

133. CODE §§ 2-711(2)(a); 2-502(1).

134. MINN. STUDY 201-02; SALES AND BULK SALES 141.

135. CODE § 2-712.

when the buyer learns of the breach rather than the time of delivery.¹³⁶

The buyer's right to specific performance or replevin is liberalized by section 2-716. The requirement that the goods must be specific or ascertained is eliminated. Specific performance is now allowed "where the goods are unique or in other proper circumstances."¹³⁷ Uniqueness depends on the "total situation which characterizes the contract" and may encompass requirements contracts as well as heirlooms.¹³⁸ Other proper circumstances may include situations where the buyer is unable to cover.¹³⁹ Under the Uniform Sales Act the buyer could replevy only if the property in the goods had passed to him. The Code avoids the problem of determining whether property has passed and permits replevin whenever he is unable to cover. If he can cover he has no need for replevin.¹⁴⁰

C. Statute of Limitations

A uniform statute of limitations of four years is provided by section 2-725, and should simplify matters with regard to interstate transactions. This period applies to all breaches, including warranties. The parties may shorten the time period to not less than one year in the original agreement, but they may not extend it.

ARTICLE 6. BULK TRANSFERS

Article 6 simplifies and makes uniform the various state laws designed to prevent fraudulent bulk transfers. It makes several changes in the present Minnesota bulk sales law.¹⁴¹ The focus of article 6 is on the area where the risk of a fraudulent bulk sale is the greatest, those businesses where unsecured credit is commonly extended on the strength of a stock of merchandise.¹⁴² Consequently, a number of bulk transfers are now excluded from the bulk sales law. In addition, section 6-103 describes certain bulk

136. CODE § 2-713(1).

137. CODE § 2-716(1).

138. CODE § 2-716, comment 2.

139. *Ibid.*

140. SALES AND BULK SALES 145. The *Minnesota Study* refers to § 2-716 as restricting the buyer's right of replevin. MINN. STUDY 210. Properly viewed, however, the Code is more liberal; it allows the buyer to replevy whenever he would need to — when he is unable to cover — regardless of title considerations.

141. MINN. STAT. § 513.18 (1961).

142. CODE § 6-102, comment 2.

transfers that are excluded from article 6. Compliance with article 6 is required only if a transfer qualifies as a bulk transfer and is not excepted by section 6-103.

A. *What Constitutes a Bulk Transfer*

Three factors determine whether a bulk transfer must comply with article 6.¹⁴³ First, the transfer must be outside of the ordinary course of the seller's business. This does not differ from the present law.¹⁴⁴ Second, the transfer must consist of "a major part of the materials, supplies, merchandise or other inventory of an enterprise. . . ."¹⁴⁵ The Code does not define what is a "major part," but most commentators believe that more than fifty per cent is meant.¹⁴⁶ Third, the transferor's principal business must consist of the sale of merchandise from stock. This definition would encompass a retail store but not a business providing services such as a barber shop.¹⁴⁷ If there is a bulk transfer of inventory, an accompanying transfer of equipment will be subject to article 6 if the transfer is of a substantial part of the equipment.¹⁴⁸ Here, "substantial part" may well be less than fifty per cent.¹⁴⁹

B. *Compliance with Article 6*

Failure to comply with the provisions of the present bulk sales law makes the sale presumptively fraudulent.¹⁵⁰ The transferee may, by a showing of good faith, overcome this presumption and defeat the claims of the transferor's creditors. The effect of non-compliance is more severe under the Code. Under section 6-104 a noncomplying transfer is "ineffective" against creditors of the transferor regardless of the good faith of the transferee.¹⁵¹ Although the procedure for compliance tends to be cumbersome, the result of noncompliance makes it desirable in most cases.¹⁵²

The main requirements of article 6 are similar to the present

143. See CODE § 6-102.

144. See MINN. STAT. § 513.18 (1961).

145. CODE § 6-102(1).

146. MINN. STUDY 584; SALES AND BULK SALES 166; Willier & Hart, *A Practical Approach to Article 6: Bulk Transfers*, in UNIFORM COMMERCIAL CODE CO-ORDINATOR ANNOTATED 461, 466 (Boston College Industrial & Commercial Law Review ed. 1963).

147. CODE § 6-102, comment 2.

148. CODE § 6-102(2).

149. SALES AND BULK SALES 166.

150. See MINN. STAT. § 513.18 (1961).

151. CODE § 6-104, comment 2; MINN. STUDY 588.

152. The *Transactional Guide* suggests several alternatives to compliance including: obtaining waivers from creditors; use of a bond to cover the

bulk sales law. An inventory of the property and a list of the transferor's creditors must be prepared and notice of the transfer sent to all creditors. The inventory and the list of creditors have to be preserved for six months and available for inspection by creditors unless they are filed with the Secretary of State. The list of creditors must be sworn to by the transferor, but errors or omissions in the list will not render the transfer ineffective, unless the transferee has knowledge of them.¹⁵³ In view of the priority given to federal tax liens, it is wise to routinely send notices of the transfer to the Internal Revenue Service, as well as state and local taxing authorities, even if it is not listed as a creditor by the transferor. Notice must be sent to the creditor at least ten days before the transferee takes possession or makes payment, whichever occurs first,¹⁵⁴ rather than five days before the sale.

The Code is more explicit than the present law with regard to the contents of the notice and the manner of service. Section 6-107 prescribes the contents in detail; it should be followed exactly. If the debts of the transferor are not to be paid in full as they fall due, further detail regarding the nature of the transfer, the amount of the consideration and the time and place of payment must be given. The notice must be delivered personally or sent by registered or certified mail to all creditors shown on the list furnished by the transferor.

The transferee has fulfilled his obligation if proper notice is served on the creditors. He has no duty to apply the proceeds to the debts of the transferor.¹⁵⁵ However, if the transfer is an interstate transaction, the law of the state where the property is situated may govern.¹⁵⁶ Therefore, that state's law must be consulted to determine whether the proceeds must be held for the benefit of the transferor's creditors.

Auction sales are specifically subjected to the requirements of article 6, but the duty of compliance is placed on the auctioneer, who is made liable to the creditors of the transferor up to the net proceeds of the auction.¹⁵⁷ The auction sale itself is not rendered ineffective by noncompliance.

A short, six month statute of limitations is imposed unless the

claims of creditors; placing the proceeds of the transfer in escrow; or relying on the transferor to pay his debts as they come due, but concludes that "in most cases . . . the transferor will be well advised to comply with the procedures of article 6." *TRANSACTIONAL GUIDE* 844-46.

153. CODE § 6-104(3).

154. CODE § 6-105.

155. Minnesota did not enact Code § 6-106, which calls for application of the proceeds of the transfer pro rata to the debts of the transferor.

156. *Roberts v. Norrell*, 212 F. Supp. 897, 900 (N.D. Ala. 1963).

157. CODE § 6-108.

sale has been concealed,¹⁵⁸ so creditors of the transferor must act promptly if they wish to levy on the property. This is especially true since a good faith purchaser for value from the transferee takes title free of the creditors' rights.¹⁵⁹

158. CODE § 6-111.

159. CODE § 6-110.

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